

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FAL:lb(KH)
8/1/08

HARTFORD FIRE INSURANCE COMPANY a/s/o
A&E Stores, Inc.,

Plaintiff (s),

- against -

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Defendant(s).

Civil Action No.
08CV6303/08

VERIFIED ANSWER

The defendant, Consolidated Edison Company of New York, Inc., by its attorney, Richard W. Babinecz, answering the complaint, alleges:

AS TO THE FIRST ALLEGED BACKGROUND

FIRST: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1" and "2".

SECOND: Denies upon information and belief each allegation in paragraph "3".

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "4".

AS TO THE ALLEGED JURISDICTION AND VENUE

FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "5" and "6".

AS TO THE ALLEGED PARTIES

FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "7", "8" and "9".

SIXTH: Admit each allegation contained in paragraph "10".

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FN0344959

SEVENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “11”, “12”, “13” and “14”.

EIGHTH: Denies upon information and belief each allegation in paragraph “15”.

AS TO THE ALLEGED FIRST CLAIM FOR RELIEF
(NEGLIGENCE)

NINTH: Repeats each denial made of the allegations in paragraph “1” through “15” and repeated in paragraph “16”.

TENTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “17”

ELEVENTH: Denies upon information and belief each allegation in paragraphs “18”, “19” and “20”.

AS A FIRST AFFIRMATIVE DEFENSE:

TWELFTH: Any injuries or damages which the plaintiff sustained were caused in whole or in part by the plaintiff's negligence.

AS A SECOND, SEPARATE, AND COMPLETE
DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION, THE DEFENDANT, CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC.,
ALLEGES, UPON INFORMATION AND BELIEF:

THIRTEENTH: That the defendant, Consolidated Edison Company of New York, Inc., is a New York corporation engaged in the sale and distribution of gas and electricity under franchises. All work performed or equipment installed at the times mentioned in the complaint was pursuant to the rights granted by law and the permission or license of the proper municipal authorities.

AS A THIRD AFFIRMATIVE DEFENSE:

FOURTEENTH: That this action is barred by the Statute of Limitations and may not be maintained.

AS A FOURTH AFFIRMATIVE DEFENSE:

FIFTEENTH: Plaintiff failed to mitigate its damages by acting reasonably, under the circumstances, to protect its property.

AS A FIFTH AFFIRMATIVE DEFENSE:

SIXTEENTH: This Court lacks jurisdiction as there is not complete diversity of citizenship between the parties.

WHEREFORE, Consolidated Edison Company of New York, Inc., demands judgment dismissing the complaint with costs and disbursements.

RICHARD W. BABINECZ
Attorney for Defendant
Consolidated Edison Company
of New York, Inc.

By:



Frank A. Lisi
Address:
4 Irving Place, Room 1800
New York, N.Y. 10003-3598
6965 (FAL)

RIDER

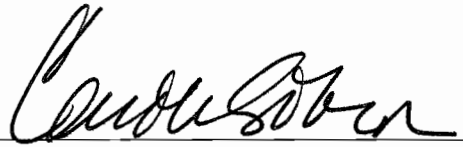
TO:

ROBINSON & COLE, LLP
Attorney for Plaintiff
885 Third Avenue
28th Fl.
New York, New York, 10022

CORPORATE VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

The undersigned, being duly sworn, deposes and says: That I am an officer of Consolidated Edison Company of New York, Inc.; that the foregoing is true to my knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true.


An Officer of Consolidated Edison Company (FAL)
of New York, Inc.

Sworn to before me this
5 day of August, 2008


Notary Public

WILLIAM VESPE
Notary Public, State of New York
No. 01VE4965285
Qualified in Queens County
Commission Expires April 16, 2010

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

The undersigned being duly sworn deposes and says: that I am over the age of 18 years; am not a party to this action; and am employed in the office of RICHARD W. BABINECZ, the attorney for Consolidated Edison Company of New York, Inc.

That on the 5th day of August, 2008, I served the within Verified Answer upon:

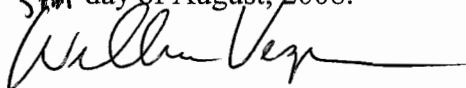
ROBINSON & COLE, LLP
Attorney for Plaintiff
885 Third Avenue
28th Fl.
New York, New York, 10022

by depositing a true copy of the same securely enclosed in a post-paid wrapper in a Post-office Box regularly maintained by the United States Government at No. 4 Irving Place, New York, N.Y. directed to the said attorney(s) at the address(es) set forth above, such being the address(es) designated by the said attorney(s) for that purpose.



BERNARD HERBERT

Sworn to before me this
5th day of August, 2008.



WILLIAM VESPE
Notary Public, State of New York
No. 01VE4965285
Qualified in Queens County
Commission Expires April 16, 2010